

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

SOVEREIGN BANK	:	CIVIL ACTION
	:	
v.	:	
	:	
CHICAGO TITLE INSURANCE	:	
COMPANY & OLD REPUBLIC	:	
NATIONAL TITLE INSURANCE	:	
COMPANY	:	NO. 00-596

MEMORANDUM AND ORDER

J. M. KELLY, J.

AUGUST , 2000

Presently before the Court is a Motion to Dismiss filed by one of the Defendants, Old Republic National Title Insurance Company (“Old Republic”). Old Republic claims this Court lacks subject matter jurisdiction over the claims brought by the Plaintiff, Sovereign Bank (“Sovereign Bank”). For the following reasons, the Defendant’s motion is denied.

I. BACKGROUND

On approximately February 1, 2000, Sovereign Bank filed a Complaint in this Court alleging certain state law claims arising from title insurance policies issued by the Defendants. Without going into significant detail, Sovereign Bank claims the Defendants are responsible for losses sustained on a mortgage under their respective title insurance policies. Accordingly, Sovereign Bank has raised causes of action for breach of contract, bad faith refusal to defend and indemnify in a separate proceeding and violation of the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-1 to -91 (West 1989).

Sovereign Bank is a federally chartered savings bank headquartered in Berks County, Pennsylvania. It has approximately 137 branch offices in New Jersey, 6 branch offices in Delaware and 159 branch offices in Pennsylvania. Additionally, it maintains twenty-five non-

branch offices in Pennsylvania, seven non-branch offices in New Jersey, two non-branch offices in Florida, Rhode Island, Massachusetts and New York, respectively, and one non-branch office in Connecticut and Delaware, respectively.

Jurisdiction in this matter is predicated on diversity: Sovereign alleges that it is a citizen of Pennsylvania, that Chicago Title Insurance Co. is a Missouri corporation with its principle place of business in Illinois and that Old Republic is a Minnesota corporation with its principle place of business in Minnesota. Old Republic argues presently that this Court lacks diversity jurisdiction because, as a federally-chartered financial institution, Sovereign is not a citizen of any state for diversity jurisdiction purposes.

II. STANDARD OF REVIEW

A motion to dismiss pursuant to Rule 12(b)(1) challenges a federal court's authority to hear the case. Therefore, the party asserting jurisdiction bears the burden of showing that the case is properly before the Court at all stages of the litigation. See Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993). Motions pursuant to Rule 12(b)(1) take one of two forms: those that attack the complaint on its face and those that attack the existence of subject matter jurisdiction in fact. See Yuksel v. Northern Am. Power Tech., Inc., 805 F. Supp. 310, 311 (E.D. Pa. 1992); Kelly v. Blake, No. CIV. A. 93-CV-0365, 1993 WL 131518, at *1 (E.D. Pa. Apr. 26, 1993). A facial attack requires the district court to take the allegations of the complaint as true in deciding whether there is subject matter jurisdiction. See Mortenson v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977); Garcia v. United States, 896 F. Supp. 467, 471 (E.D. Pa. 1995). In considering a factual attack, however, the court is free to weigh the evidence

in determining its power to hear the case. See Mortenson, 549 F.2d at 891; Garcia, 896 F. Supp. at 471.

III. DISCUSSION

Diversity jurisdiction is prescribed by 28 U.S.C. § 1332(a) which states, “the district court shall have original jurisdiction of all actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between . . . citizens of different states.” 28 U.S.C. § 1332(a) (1994). It is not disputed that the amount in controversy requirement is satisfied in this case. Old Republic contends, however, that because Sovereign is a federally-chartered financial institution, the parties are not diverse.

Generally, federally-chartered corporations are not citizens of any state for diversity jurisdiction purposes. See Feuchtwanger Corp. v. Lake Hiawatha Fed. Credit Union, 272 F.2d 453, 455 (3d Cir. 1959). Courts have recognized an exception, however, for those corporations whose activities are localized in a particular state, deeming them to be citizens of that state. See id. (noting localization of federal corporation is sufficient for finding citizenship for diversity purposes); Provident Nat’l Bank v. California Sav. & Loan Ass’n, 624 F. Supp. 858, 861 (E.D. Pa. 1985), aff’d, 819 F.2d 434 (3d Cir. 1987). In determining whether a federally-chartered corporation’s activities are sufficiently localized, courts are to look not only to whether the corporation’s activities are exclusive to one state, but also examine the entirety of the corporation’s business. See Loyola Fed. Sav. Bank v. Fickling, 58 F.3d 603, 606 (11th Cir. 1995). Relevant factors to consider include the location of the corporation’s principal place of business, the existence of branch offices outside the state, the amount of business transacted in different states and any other evidence that the corporation is local or national in nature. See id.

Furthermore, “[t]he activities do not have to be 100% localized in order to trigger this exception.” Id.

Applying these considerations to the instant case, the Court finds that at the time of suit, Sovereign’s activities were sufficiently localized in Pennsylvania for diversity jurisdiction purposes.¹ First, Sovereign’s principle place of business is located in Pennsylvania and has been since its founding in 1875. There, it employs approximately 2,535 individuals, more than half of its workforce. It also holds a significant place in the Berks County community, participating extensively in local commercial and community programs, activities and organizations.

Additionally, Sovereign has several wholly-owned subsidiaries which are Pennsylvania corporations including Main Line Abstract Corporation, 1130 Abstract, Inc. and First Lancaster Financial Corp. Its holding company, Sovereign Bancorp, Inc., is also a Pennsylvania corporation with its headquarters in Philadelphia, Pennsylvania. Furthermore, a majority of Sovereign’s branch offices, and approximately sixty percent of its automated teller machines and non-branch offices are located in Pennsylvania.

Finally, a significant majority of the Plaintiff’s business is transacted in Pennsylvania. More of Sovereign’s loans originated in Pennsylvania than any other state that it serves. Of those loans still outstanding, approximately 72% originated in Pennsylvania and they represent

¹ Old Republic argues that the Court should consider not only Sovereign’s activities as of the time this cause of action was filed, but events that have since, or will, transpire. Specifically, Old Republic contends the Court should include Sovereign’s acquisition of Fleet Bank/BancBoston located in New England. According to Sovereign, and uncontested by the Defendant, as of February 1, 2000, the date this suit was filed, that purchase had not been finalized. Because citizenship for jurisdictional purposes is determined as of the date the cause of action is filed, the Court is precluded from considering Sovereign’s acquisition of Fleet Bank/BancBoston in its analysis. See Freeport McMoran, Inc. v. K.N. Energy, Inc., 498 U.S. 426, 428 (1991).

approximately 73% of the total outstanding amount.

Accordingly, the Court finds Sovereign's activities to be sufficiently localized in Pennsylvania to be deemed a citizen for the purposes of diversity jurisdiction. Because the parties are otherwise diverse and the amount in controversy is satisfied, diversity jurisdiction is established and Old Republic's motion is denied.

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ORDER

AND NOW, this day of August, 2000, in consideration of the Motion to Dismiss filed by the Defendant, Old Republic National Title Insurance Company (Doc. No. 7) and the responses of the parties thereto, it is ORDERED that the motion is DENIED.

BY THE COURT:

JAMES McGIRR KELLY, J.